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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TEOFIL BRANK,

16 Defendant.

Case No. CR 15-00131-JFW

**DEFENDANT'S OBJECTION TO
GOVERNMENT'S
SUPPLEMENTAL PROPOSED
JURY INSTRUCTIONS (DOCKET
NO. 262)**

Hearing Date: July 9, 2015

Hearing Time: 7:45 a.m.

Courtroom of the Hon. John F. Walter

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
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3 Mr. Brank objects to the Government's Supplemental Proposed Jury Instructions
4 (Docket No. 262), and specifically, the Government's Supplemental Proposed
5 Instruction Relating to Count Six: Use of an Interstate Facility to Facilitate an Unlawful
6 Activity California Law on Extortion (Count Six Supplemental Instruction). Docket
7 No. 262 at 2-3.

8 First, this is the first time, the evening before trial, that the government has ever
9 offered an instruction as to California law. The government did not submit any
10 instruction as to California law in either of its two previous sets of proposed jury
11 instructions.

12 Second, it is plain from a reading of the lengthy Count Six Supplemental
13 Instruction that the instruction will confuse the jurors. The instruction is lengthy and
14 confusing, with numerous terms that will raise definitional questions and issues.
15 Further, the proposed instruction will itself require additional clarifying instructions
16 that the elements of California extortion are separate and distinct from the elements of
17 federal extortion set out in Counts 1, 2, and 5. The late-filed supplemental instruction
18 raises the strong possibility that the jury may find Mr. Brank guilty of California
19 extortion and therefore incorrectly conclude that he is also automatically guilty of the
20 federal extortion counts in Counts 1, 2, and 5.

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Most significantly, the California instruction contains no guidance on the claim of right defense that has been judicially read into extortion statutes by federal case law. *See* Ninth Circuit Model Criminal Jury Instruction No. 8.142A.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: July 8, 2015

By /s/ *Ashfaq G. Chowdhury*

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